SOME FEATURES OF OBLIGATORY INDUSTRIAL INSURANCE

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The legislatures of fourteen states have passed statutes abolishing the fellow-servant rule.[1] Seven or more of the states have modified one or more of the common law defenses, either by statute or by decision of their courts, along the following lines:[2] (1) Adopting the doctrine of comparative negligence, which has always been the rule and common law in certain states, like Georgia and in admiralty causes in the federal courts; (2) changing the burden of proof of contributory negligence from the plaintiff to the defendant (as has always been the rule in the federal court and some states), as for example, in Ohio and Oregon; (3) taking away the defense of assumption of risk when the risk assumed was caused by the fault or negligence of the employer.

The tendency of the development of the statutory law during the last few years, relative to the recovery of compensation for injuries to workingmen which arise out of their employment, is to wipe out the common law defenses, leaving the action based solely upon the fault of the employer.

The chief sources of the friction between employer and employe, the rapid increase in the demands for charitable relief and care for delinquent children, and the corresponding demand for compensation for all personal injuries which workingmen receive in the due course of their employment, continue to exist largely because compensation for injuries can only be obtained when the employe can prove *fault* on the part of his employer.

Fault or negligence of the employer can be proven in much less than 20 per cent. of the cases, and, what is most startling, no matter how careful the employe and the employer are, or how high the efficiency of the state may rise in the prevention of accidents, the cause of 50 to 55 per cent. of all accidents to employes is

[1] Arkansas, Colorado, Florida, Georgia (1885), Iowa, Kansas, Minnesota, Montana, Nebraska, Nevada, North Carolina, Oklahoma, South Dakota and Missouri.

[2] California, Mississippi, Ohio, Oregon, South Carolina, Utah, Virginia.

solely due to the natural hazard or dangers of the business—the combined negligence of the employe and the employer. On the other hand, the cause of 16.8 per cent. of all accidents are traceable to the negligence of the employers, and the cause of 28.9 per cent of all accidents is attributable to the negligence of the employes.[3] Under the practical operations of the common law remedy, based upon fault, it is impossible to prove the employers negligent in anything like 16.8 per cent. of the cases of injuries to employes. For that reason, the old theory of making fault the basis for an action to compensation for injured workmen has been abandoned.

The only available statistics in the United States showing how much compensation the dependents of workmen killed or workmen injured receive under the present laws in the United States are in the reports of the investigations made by the Russell Sage Foundation in Allegheny County, Pa., 1906 and 1907; the investigations of the Employers' Liability Commission of New York State, and those of the Liability Commission of Illinois, during the years 1909-1910, and the investigations, now about complete, which have been made by the experts of the Employers' Liability Commission of Ohio in Cuyahoga County (Cleveland), during the months of November and December, 1910, and January and February, 1911, covering fatal and non-fatal accidents for the period of 1905-1910. On account of the great importance of the results of these investigations in framing laws providing for industrial insurance to workmen, a *résumé* of their results is given.

New York Statistics

During the years 1907-1908, ten insurance companies, which keep employers' liability records, doing business in the state of New York, received in premiums from employers, $23,524,000; they paid to injured employes, $8,560,000; waste, $14,964,000.[4]

It should further be added that ten liability insurance companies settled 414,000 cases in the three years prior to 1910 in New York by making payments in any sum at the rate of one payment in eight cases or in 12½ per cent of the cases. —(N. Y. Report p. 25.)

Nothing could more strikingly set forth the waste of the present system than the fact that only 36.34 per cent. of what employers

[3] Employers' Liability Report of Ohio, Part I, page xxix.
[4] Employers' Liability Commission of New York, First Report, page 31.

pay in premiums for liability insurance is paid in settlement of claims and suits. Thus, for every $100 paid out by employers for protection against liability to their injured workmen, less than $37 is paid to those workmen; $63 goes to pay the salaries of attorneys and claim agents, whose business it is to defeat the claims of the injured, to the cost of soliciting business, to the cost of administration, to court costs and to profit. Out of this 36.34 per cent. the injured employe must pay his attorney. The same report shows that the attorneys get 36.3 per cent. of what is paid to the injured employes.

This investigation covers forty-six cases, where the recovery was about $1500 each. In small recoveries the attorney fees take a larger proportion. This report shows that somewhere between 20 and 25 per cent. of the money paid by the employing class, actually passes to the injured workingmen for their dependent families in death cases.

The proportions of the loss borne by employers in injury cases does not differ greatly from that in death cases. Thus, out of 388 injury cases of the married men alone, 56 per cent. receive no compensation; of single men contributing to the support of others, 69 per cent. receive no compensation; single men, without dependents, 80 per cent. receive no compensation.

Russell Sage Foundation Investigations in Allegheny County, Pennsylvania

The investigations recently conducted in Allegheny County, Pa., under the direction of the Pittsburgh *Survey,* showed that out of 355 cases of men killed in industrial accidents, all of whom were contributing to the support of others, and two-thirds of whom were married, 89 of the families left received not a dollar of compensation from the employer, 113 families received not more than $100, 61 families received something more than this $100, but not more than $500. In other words, 57 per cent. of these families were left by their employers to bear the entire burden of the income loss, and, granting that all unknown amounts would be decided for the plaintiff, only 27 per cent. received in compensation for the death of a regular income provider more than $500, a sum which would approximate one year's income of the lowest paid of the workmen killed.[5]

[5] First Report of the Employers' Liability Commission of New York, page 31.

Wisconsin Statistics

The Wisconsin Bureau of Labor and Industrial Statistics reports that in 306 non-fatal cases in which reports were received by mail from workmen while at work the compensation was as follows:[6]

	Cases.	Per Cent.
Received nothing from employers	72	23.5
Received amount of doctor's bills only	99	32.4
Received amount of part of doctor's bills	15	4.9
Received something in addition to doctor's bills	91	29.7
Received something, but not doctor's bills	29	9.5
Total	306	100.00

In two-thirds of the cases, part or all of the doctor's bills were paid; in less than a third was anything more paid, and in about one-fourth of the cases nothing whatever was paid.

In 131 non-fatal cases in Wisconsin, concerning which reports were secured by factory inspectors, the following disposition was made:

	Cases.	Per Cent.
Received nothing from employer	28	21.37
Received doctor's bills only	56	42.75
Received something in addition to doctor's bills	10	7.63
Received something, but not doctor's bills	34	25.96
Not settled	3	2.29
Total	131	100.00

Illinois Statistics

The Employers' Liability Commission of the State of Illinois has recently made a report on its investigation of industrial accidents and employers' liability. More than 5000 individual accidents were investigated and recorded, together with comparative figures and analysis. The results of the investigations of the Illinois Commission are given by Edwin R. Wright, secretary of the Commission, and president of the Illinois Federation of Labor.

Six hundred and fourteen fatal accidents were recorded. The families of 214 of these workers received nothing in return for the loss of the breadwinner. One hundred and eleven damage suits

[6] First Report of the Employers' Liability Commission of New York, page 31.

are pending in court. Twenty-four cases have been settled through court proceedings. Two hundred and eighty-one families settled directly with the employer.

Skilled railroad employes, in settlement for death claims, averaged about	$1,000.00
Steel workers	874.00
Railroad laborers	617.00
Skilled building tradesmen	348.00
Skilled electric railway employes	310.00
Unclassified workingmen	311.00
Miscellaneous trades	292.00
Packing house employes	234.00
General laborers	154.00
Mine workers	155.00
Electric railway laborers	75.00

Of every 100 industrial accidents, 15 go to court, 7 are lost and 8 are won. Ninety-two injuries out of every 100 receive no compensation. (This includes both fatal and non-fatal accidents.)

There have been 53 fatal cases of recent date. In fatal cases, the usual defenses of the employers—the fellow-servant doctrine, assumption of risks, etc.—did not apply, or there would have been no recovery at all. For these—the very pick of industrial cases—the average recovery for death was only $1877.36, of this an average amount of $740.95 was paid to attorneys or expended on court fees, etc., leaving an actual payment of $1126.41 to the family of the dead worker; 34 widows were compelled to seek employment and 65 children left school to help keep the wolf from the door.

Germany and England

The German state insurance during the twenty years ending in 1905 required payments amounting to $802,000,000. Of this sum, $555,750,000 were paid on account of sickness insurance; $232,750,000 were paid on account of accidents, and $13,500,000 paid on account of invalidism and old age. To the fund necessary to make these payments, the employer contributed $424,500,000. The employes contributed $377,000,000, and the Imperial Government paid the cost of administration and a small portion of the funds necessary to take care of invalidism and old-age pensions (50 marks in each case insured).

The general rules in respect to the raising of the insurance fund are that the employes should pay two-thirds of the fund necessary to take care of sick insurance, which lasts for thirteen weeks, and the employers pay one-third. In the case of accident insurance, the employers pay 85 per cent. and the employes 15 per cent. In the case of invalidism and old-age insurance, the Imperial Government pays $12.50 for each person injured, and the remainder of the fund is paid half and half by the employers and employes. The German plan in 1907 had 27,172,000 workingmen insured against sickness, accidents and old age, out of a population of 62,000,000 people.

The English plan, in 1908, provided for the insurance of 13,000,000 workingmen. In case of death, the compensation paid is, at most, three years' wages, £300 or $1460, with a minimum payment of three years' wages at £150 or $730. In case of disability lasting longer than one week, the compensation paid is one half-week's average wage, not to exceed $4.87, as long as the disability lasts. Responsibility for the payment of the compensation rests solely on the employer, and employes are not required to insure.

In both the German and English plans the rules of contributory negligence, assumption of risk, and the fellow-servant rules are abolished, and the only kind of negligence recognized is that of malicious negligence on the part of the employer or employe.

The statistics of the United States show that over 50 per cent. of all industrial accidents are due to the inherent dangers and risks of the industrial business, that not to exceed 20 per cent. of all these accidents are due to, or attributable entirely to, the negligence of the employer, and that, at most, 25½ per cent. are attributable solely to the negligence of the employe. *The common law furnishes no plan of relief, except where it can be proven that the defendant is at fault. Therefore, the common law affords no relief for something like 80 per cent. of all workingmen injured and killed in the United States. The lowest estimate of the number of persons injured and killed in industrial accidents in 1909 is 536,000 people.*

Montana, in 1910, put in operation a mutual plan of insurance for coal miners. The compensation paid the wife and children or dependents of a miner killed in the due course of his employment is $3000. In case the miner is totally disabled by an injury, he is paid $1 for each working day during disability. The loss of an eye, or limb, caused by accident to a miner while employed in or

about a mine is compensated for in the sum of $1000. The compensations are paid from a fund which is administered by the auditor of state. The operators contribute to this fund according to the quantity of coal mined, and are authorized by law to deduct 1 per cent. from the wages due the miners.

The New York act of 1910 provided for a compensation to workmen ranging from $1500 to $3000 in case of death. Other injuries were proportionately compensated. These payments were to be borne by the employer whether he was or was not at fault. The injured workman had the choice of suing at law or of taking the compensation. The Appellate Court of New York has held this law unconstitutional.

The employers' liability commissions of Washington, Minnesota, Wisconsin and Ohio have reported acts to their respective legislatures recommending plans for compensation of workingmen for injuries without regard to fault. The Washington act provides a plan of obligatory mutual insurance, the state being the custodian of the fund. Compensation varies from $1500 to $4000 in case of death or total disability. This law has been enacted. Non-fatal injuries are compensated for at about 60 per cent. of the impairment of wages of the workingmen injured. The act defines a large class of dangerous employments. The employe waives the right to sue, and is compelled to accept the compensation provided by the act in lieu of all other remedies. The Washington plan also stipulates that the employer shall contribute to the first-aid fund 4 cents for each workday that an employe worked, which takes care of the injured workingman for the first three weeks following the injury. The law authorizes the employer to deduct 2 cents each workday from the wages of his employe.

The Minnesota plan is based upon state insurance and is applicable to all dangerous employments. The compensations are liberal, ranging from $1500 to $3000, in case of death. The compensation for workingmen partially disabled is 50 per cent. of the impairment of their earning power. The Wisconsin act is optional and follows the New York act in its principles and amounts of compensation.

New Jersey, in 1911, enacted a comprehensive employers' liability and workingmen's compensation law.

Massachusetts, Connecticut, Missouri and Texas have com-

missions studying the problem. Many of the other state legislatures are considering bills to abolish or largely modify the common law defenses.

The International Harvester Company has put into operation a voluntary plan of industrial insurance which provides compensation varying in amount from doctor's bills to $4000. The employes are not obliged to contribute anything to the fund, and compensations are paid without regard to fault. The acceptance of the compensation releases the company from a suit at law.

These numerous state commissions are endeavoring to answer the question, What plan of compensation shall be substituted for the old common law action based upon the fault of the employer? The evidence indicates that the most just and efficient remedy is obligatory industrial insurance, such as prevails in Germany.